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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/075,666	05/11/1998	TETSUJIRO KONDO	450100-2780.	3934
20999 7590 07/28/2008 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER KIM, CHONG R	
			ART UNIT 2624	PAPER NUMBER
			MAIL DATE 07/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/075,666	Applicant(s) KONDO, TETSUJIRO	
	Examiner CHARLES KIM	Art Unit 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08/061730.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment and Arguments

1. Applicant's amendment filed on June 30, 2008 has been entered and made of record.
2. Applicant's submissions do not overcome the rejections in the previous Office action for at least the following reasons.

Claim Objections

3. Applicant's claims filed on June 30, 2008 are objected to for the following two reasons:

I. ***Status identifiers*** – the claims do not have proper status identifiers. Claims 1-14 should be labeled "Original" and claims 15-38 should be labeled "New." Appropriate correction is required.

II. ***Underlining*** – the claims are improperly underlined because every claim, including the original claims, is underlined. According to MPEP 1453, "The matter to be added by reissue must be underlined." Accordingly, claims 15-38, which comprise the matter to be added by the reissue, should be underlined. Claims 1-14 on the other hand, do not include matter to be added and therefore, should NOT be underlined.

Oath/Declaration

4. Applicant's oath/declaration filed on June 30, 2008 is defective because it fails to identify at least one error that is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. Examiner explained during a telephone conversation with Thomas Presson, that there were two outstanding deficiencies with Applicant's oath/declaration. First, the oath/declaration failed to identify at least one error that is relied upon to support the reissue application. Second, the oath/declaration did not cover additional defects or errors that were corrected in the reissue after the filing of the application. While Applicant's oath/declaration filed on June 30, 2008 remedies the second deficiency of covering additional defects or errors, it does not address the first deficiency—the oath/declaration still fails to identify at least one error that is relied upon to support the reissue application. The Examiner once again suggests that Applicant refer to MPEP 1414.01, which states inter alia:

It is not sufficient for an oath /declaration to merely state "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure." Rather, the oath /declaration must specifically identify an error. In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of "... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient " error" statement since applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that " this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified.

A new oath/declaration satisfying the requirement above is required.

Claim Rejections - 35 USC § 251

5. Claims 1-38 are rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the oath/declaration is set forth in the discussion above in this Office action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kim whose telephone number is 571-272-7421. The examiner can normally be reached on Mon thru Thurs 8:30am to 6pm and alternating Fri 9:30am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/CHARLES KIM/

Patent Examiner

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July 22, 2008